

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

EDWIN KINDELL THOMAS,)	
)	
Petitioner,)	
)	
vs.)	No. CIV-08-440-C
)	
H.A. LEDEZMA, Warden,)	
)	
Respondent)	

MEMORANDUM OPINION AND ORDER

This action for habeas corpus relief brought by a prisoner, proceeding pro se, was referred to United States Magistrate Judge Robert E. Bacharach, consistent with the provisions of 28 U.S.C. § 636(b)(1)(B). Judge Bacharach entered a Report and Recommendation (“R&R”) on July 22, 2008, to which, surprisingly, Petitioner has objected. The Court notes its surprise, as the R&R recommended denial of Respondent’s summary judgment motion. Respondent also objected to the R&R, providing additional evidentiary materials and arguing that he is entitled to judgment. At the direction of the Court, Petitioner filed a Reply to Respondent’s Objection and the matter is now ready for disposition.

The facts and law are accurately set out in Judge Bacharach’s Report and Recommendation and there is no purpose to be served in repeating them yet again. As accurately framed by Judge Bacharach the issue is: “whether Mr. Thomas should have received credit toward the federal sentence for all of the other time spent in prison on the Burleson County conviction.” Dkt. No. 13, n.8. Judge Bacharach noted that Respondent was not entitled to judgment as he had failed to provide proper evidentiary support for the

arguments in his brief that Petitioner had already received credit for the time served and it would therefore be inappropriate to also credit the federal sentence. Respondent's Objection to the R&R corrects the evidentiary shortcoming, providing an affidavit and documentary evidence demonstrating Petitioner has received credit. Petitioner's Reply does not create a factual dispute on the issue. Accordingly, the Court finds Respondent is entitled to judgment.

For the reasons set forth herein, the Court adopts the Report and Recommendation of the Magistrate Judge in part, and, for the reasons announced herein, the Court GRANTS Respondent's Motion for Summary Judgment (Dkt. No. 10). A separate judgment will issue.

IT IS SO ORDERED this 22nd day of September, 2008.


ROBIN J. CAUTHRON
United States District Judge